SAVE LAKE SAMMAMISH
1420 N.W. Gilman Blvd., # 2565
Issaquah, Washington 98027

EXHIBIT NO. CC 64

May 16, 2013

The Mayor and Council Members
City of Sammamish
486 228th Ave. NE
Sammamish, WA 98074

Re: Environmentally Critical Areas Ordinance Revision

Dear Mr. Mayor and Honorable Council Members:

Save Lake Sammamish is an all-volunteer, non-profit Washington corporation founded in 1989 to protect the water quality of Lake Sammamish and the environmental benefits of its watershed. On behalf of SLS, I offer comments on the Environmentally Critical Areas Ordinance (ECA) under review.

Thank you for your work to update the ECA, the intent of which is to protect lakes, streams, wetlands and open spaces within the City. Quality of the waters of Sammamish is dependent upon basin land use. Survival of the struggling salmonids, in particular the native Kokanee, in Lake Sammamish and its tributary streams requires even greater protection of wetlands and shorelines than they have received previously. Therefore, we urge you to provide stream and lake buffers and setbacks based on best available science and resource protection, as required by RCW 36.70A.172(1). Specifically, provisions of the Special Overlay Zones, SO-180 and SO-190, should be maintained unaltered within the ECA.

History of the Special Overlay Zones, SO-180 and SO-190

Since SLS was involved in the development of these Special Overlay Zones, now known as the Erosion Hazards Near Sensitive Water Bodies (EHNSWB), it might be helpful to you to know the history of how these areas were designated for special protection and why it was imperative for them to be protected. In the early 1990s, new subdivisions were being developed on the western edge of the East Lake Sammamish Plateau after the area was included within the King County Urban Growth Area under the Growth Management Act. These new projects in turn created significant stormwater runoff that flows down steep and sensitive ravines into Lake Sammamish. Because of the steepness of these ravines and the erodible soils, significant erosion and damage to the lake began to occur. There were instances of considerable damage to the lake, including at least one toxic algal bloom.

At this time, Burnstead Homes proposed the development of Timberline Ridge, a residential plat of 103 acres of undeveloped property with 232 lots. In light of the erosion problems described above, King County asked Timberline to develop a tightline stormwater discharge system to directly discharge water into Lake Sammamish and avoid putting runoff from the newly developed residential subdivision into the steep, erodible ravines on the edge of the plateau. Because of concerns that such systems would result in the deterioration of water quality in Lake Sammamish, SLS challenged the tightline proposal for Timberline Ridge under the Shorelines Act and under state and federal water pollution laws. See Save Lake Sammamish et.al v. King County, Burnstead Construction and Washington State Dept. of Ecology, PCHB No. 93-240 and SHB 98-40. In fact, at the time, the preferred method of dealing with erosion problems from development on the plateau was to construct a total of seven pipelines to convey stormwater directly into the Lake, bypassing the vulnerable ravines, as called for in the East Lake Sammamish Basin and Nonpoint Action Plan of November 1993,

The Shorelines Hearings Board and the Pollution Control Hearings Board eventually reached decisions on SLS's challenge in decisions entered on August 30, 1994 and November 7, 1994. (These decisions are available at the Board's web site.) In its findings, the Board confirmed the conditions described above.

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Although the Board approved the Timberline Ridge tightline proposal, it concluded that King County's plans for control of stormwater impacts and pollution into Lake Sammamish were insufficient and required additional review and consideration of other methods to prevent impacts to the Lake. The Board specifically noted that ongoing planning did not consider the cumulative impacts of multiple developments that would use the then-proposed stormwater pipelines.

King County's review eventually resulted in the abandonment of the pipeline concept for control of runoff. Eventually, in 1997, the King County Council adopted a special overlay district for the East Lake Sammamish Plateau which was codified into law in the King County Zoning Code as KCC 21A.38.200 which became known as the SO-190 Overlay. Its purpose was to assure **both** the protection of the steep and erodible ravines leading from the edge of the plateau to the Lake **and** to protect water quality in the Lake. The SO-190 Overlay described regulations which included the "no disturbance" rule preventing development in these fragile ravines and a "no discharge" standard that required under most instances that all water from new developments be infiltrated on site.

The SO-190 Overlay and its regulations were the progeny of SLS's political and judicial efforts to protect the Lake, a concern recognized by the Shorelines Board in its 1994 decisions. The SO-190 Overlay is based on careful and accepted best available science and the need to protect the Lake by imposing reasonable development restrictions on a limited number of properties that are identified as being the most fragile and likely to generate the most damage to the Lake. As the Council is aware, Lakes Sammamish and Pine, as well as Ebright, Laughing Jacobs and Pine Lake Creeks are all listed by the Washington State Department of Ecology (DOE) on the 303(d) list as impaired water bodies. This indicates that these lakes and creeks need additional, not less, protection.

Therefore, unless you are persuaded to strengthen them, we urge you to keep *exactly* the same intent and resource protections that are found in the SO-180, Wetland Management Overlay, and SO-190, Erosion Hazard Overlay, provisions. Specifically, the code should include the following:

1) The property-specific overlay map, as it was in the King County Code and Surface Water Design Manual, identifying by parcel number all properties subject to these provisions.

2) No exemptions or variances from these overlay zones should be permitted for any buildings or impervious surfaces, whether public or private. (The intent is to protect sensitive resources and an insult is an insult regardless of who delivers it.)

3) Tree retention is essential to avoid erosion and water quality degradation. Tree canopy intercepts rain before it strikes the ground. Roots hold soils in place and stabilize stream banks and shorelines. Trees act as reservoirs and allow gradual infiltration to recharge of streams and aquifers.

4) Provide additional protection to Wetland Management Areas by retaining forest and open space, avoiding compaction of soils, and limiting impervious surfaces in areas draining directly to wetlands. (A beautiful "protected" two acre forested wetland in the Timberline Ridge development was destroyed by being overwhelmed by runoff from surrounding houses and roads.)

While these particularly fragile EHNSWB areas have been identified, it is **equally important to regulate runoff** from adjacent upland areas that drain into the EHNSWB areas. As you will recall, Chestnut Estates, the Crossings and other developments in the Ebright Basin do not lie within the EHNSWB, but they do drain into the EHNSWB. Evidence indicates that the increased flows from these developments caused sloughing in the fragile ravine and the destruction of at least one year class of Kokanee, 2010-2011.

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Wild, Native Lake Sammamish Kokanee

On March 16, 2000, SLS, Washington Trout and other local and national non-profit groups petitioned the Federal Department of the Interior, United States Fish and Wildlife Service (USFWS) to provide protection to the Lake Sammamish Kokanee under the provisions of the Endangered Species Act (ESA). USFWS declined to take action on our petition. The summer-run of these wild, native Kokanee was officially declared extinct in 2003.

On July 9, 2007, SLS joined with King County, City of Issaquah, the Snoqualmie Indian Tribe, People for Puget Sound, Trout Unlimited and the Wild Fish Conservancy in another petition requesting USFWS to extend ESA protection to the remaining, but badly faltering, winter-run of wild, native Lake Sammamish Kokanee. This petition was denied on a technicality. However, a joint multi-jurisdictional, non-profit and private effort under the leadership of the Kokanee Work Group (KWG), in which SLS members have been active since its inception, has been working to revive this run. Efforts have included education, riparian restoration and planting, construction of fish passage and, most notably, the removal and replacement of a culvert blocking Ebright Creek. Currently, the KWG has the genetically-unique, winter-run Kokanee on life-support – a supplemental hatchery spawning and incubation program. This is a temporary approach to maintaining these remarkable fish and has funding for a mere ten years. For the wild, native, winter-run Lake Sammamish Kokanee to survive in the future, these creatures must be returned to natural habitat. Land-locked *Oncorhynchus nerka* spend their 3-5 year lives in Lake Sammamish. They spawn and die in the Lake's tributary creeks during the wet winter months. Absent destruction by scouring high flows or smothered by sediment, their progeny emerge from redds the following spring. Established runs of Kokanee exist **only**,in Ebright, Laughing Jacobs and Pine Lake Creeks and in Lewis Creek flowing into southwest Lake Sammamish. Three of these four runs are in the City of Sammamish and their survival rests in your hands.

Our Little Red Fish have two types of habitat needs:

1) Lake Sammamish containing sufficient cold, clean oxygenated water with natural shoreline vegetation
2) Stable creek beds containing sufficient cold, clean water, clean unconsolidated gravels and stable banks held together by natural vegetation.

Existence or destruction of these habitat requirements are a direct result of land use decisions in their respective watersheds (basins).

Land Use Impact on Water Quality

In 1989 Metro – the agency responsible for the construction and maintenance of sanitary sewers to protect and improve badly polluted waters of Lakes Washington and Sammamish – published years of study and technical work in the Lake Sammamish Water Quality Report. This Report anticipated the conversion of Lake Sammamish watershed from forest and natural open space to impervious surfaces of roads and roofs. It also predicted degradation of the Lake's water quality to a worse state than when the sewers were installed, **unless** certain conditions were placed on such development. These conditions included common-sense precautions such as maintaining and protecting:

a) trees and other vegetation along streams to buffer them against erosion and to trap sediment
b) wetlands to absorb and filter rain and to recharge aquifers, streams and Lake with cold, clean water
c) set aside open space in its natural state – the most cost effective way to protect water quality

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Some of these recommendations dealing with land use have been implemented through the multi-agency and multi-jurisdictional efforts of Lake Sammamish Water Quality Management Project, Partners for a Clean Lake Sammamish, the Issaquah Creek Basin & Non-Point Action Plan and the East Sammamish Basin and Non-Point Action Plan, discussed previously in this letter. SLS members participated in all of these efforts. Indeed, SLS is a co-implementer of the Issaquah and ELS Basin Plans. Public and private monies have been spent to protect water quality proactively for the benefit of the community as a whole. These are investments in the future and an attempt to ward off avoidable, expensive disasters. All taxpayers have to bear the cost when a road slides down the hillside due to newly generated runoff from a development that shifts the cost of drainage by directing it onto public property.

Lake Sammamish water quality remains good in spite of development in the watershed. This is due to planning mentioned above, to King County's development restrictions and forest retention, as well as to public and private investment. However, the Lake is listed on the State's 303 (d) List of Impaired Water Bodies and remains vulnerable to increased phosphorus loads. The glacial soils of Sammamish contain phosphorus and when protective stabilizing vegetation is cleared for development the soils erode carrying phosphorus into the Lake. Impervious surfaces increase surface water flows from a given area and carry with them added phosphorus and other pollutants from fertilizers, loose soils and animal feces. Therefore, we urge adoption of Councilmember Whitten's proposed amendments b., c., d. and f. in Exhibit 2, most particularly:

b. *Storm water controls should meet the 80% phosphorus removal goal under the AKART standard, with a minimum of 60% removal required.*

SLS urges the Council members to recognize, honor and maintain the land-use safeguards of the EHNSWB contained in the current version of the ECA for the benefit of the community as well as the Kokanee.

Pilot Projects

SLS strongly opposes proposals to permit any "Pilot Projects" in the Erosion Hazards Near Sensitive Water Bodies (EHNSWB) and "no disturbance" areas. Permitting any type of development project in the most fragile geology within the City would be foolhardy at a minimum and potentially a huge liability. Why would the City put at risk lives, property and the environment of its citizens for the profit of a few? EHNSWB areas were identified by years of painstaking geological and hydrological evaluation, epitomizing "best available science."

Sensitive Lake Protection Standards (SLPS) now called Sensitive Lake Water Quality Treatment Areas, Core Requirements Ch.1.2.B in the King County Surface Water Design Manual (KCSWM), used by the City also, requires that stormwater be infiltrated or treated to remove 50% of annual average total phosphorus (TP) prior to discharge to Lake Sammamish. Proposed pilot projects planning to discharge runoff via pipelines directly to Lake Sammamish do not appear to comply with this requirement. The intent of these provisions is to protect water quality in

> *"the watersheds of lakes that have a combination of water quality characteristics and watershed development potential that makes them particularly prone to eutrophication induced by development."*

If the City were to permit a "Pilot Project" in a "no disturbance" zone, SLS strongly endorses Councilmember Whitten's proposed amendments g. h. and i. in Exhibit 2, setting up a real prototype program in the form of an experiment that could be evaluated. Without such criteria, a "Pilot Program" likely could devolve into merely a precedent-setting loop hole in the EHNSWB. We also support Councilmember Whitten's suggestions I., II. and III in Exhibit 2 for post-development bonding to protect downstream and downslope property owners from the costs of pilot project failures. All costs associated with the pilot programs ought to be borne by the developers of those areas and not shifted to the City's taxpayers.

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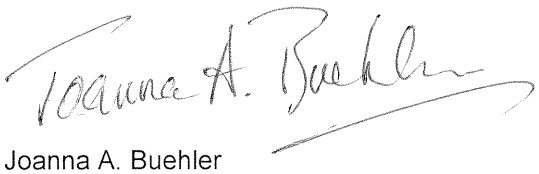
No development should be permitted in the "no disturbance" areas. Currently, the City not only permits the construction of single family homes in these extremely fragile areas, but it also exempts them from compliance with the KCSWM. Such a policy ignores the cumulative impact on the streams and lake. Death by a thousand cuts is death nontheless!

Over the past three decades King County taxpayers have made large investments, from sewer treatment plants to basin plans, in order to safeguard our regional natural resources and to maintain the high quality of life and competitive advantage our community enjoys. Weakening environmental regulations as has been proposed in order to facilitate building on soils and topography that cannot support it would negate previous community work and investments. Eutrophic lakes periodically covered with toxic algae and dead fish would not enhance property values or recreational opportunities for the citizens of Sammamish. Without healthy natural resources and open space, Sammamish would be a much less desirable place to live.

In 2005, with the foregoing considerations in mind, the then-Council adopted the EHNSWB, which incorporated the provisions of the SO-180, Wetland Management Overlay, and SO-190, Erosion Hazard Overlay. SLS asks this Council to respect these precedents and investments, avoid future liability and maintain or improve the environmental protections of the EHNSWB as it revisits the ECA.

We appreciate the Council's efforts and urge you to craft an Environmentally Critical Areas ordinance that will enhance, not weaken, protection of the valuable natural resources of the City and region. Thank you for your consideration of our comments.

Very truly yours,



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